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WESTERN DISTRICT OF LOUISIANA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

JOSEPH MICHAEL ANDREWS

CIVIL ACTION NO. 06-1438

VS.

SECTION P

WARDEN JOHN GUNTER, ET AL.

JUDGE JAMES

MAGISTRATE JUDGE HAYES Before

RULING

Before the court is a civil rights complaint (42 U.S.C. §1983) filed *in forma pauperis* on August 23, 2006 by *pro se* plaintiff Joseph Michael Andrews ("Andrews"). Andrews contends that he was subjected to excessive force while incarcerated at the East Carroll Detention Center. He seeks \$10 million in damages and the prosecution of all officers involved.

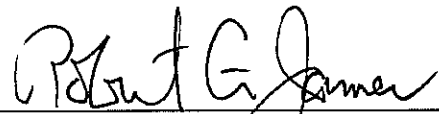
On March 29, 2007, Magistrate Judge Karen L. Hayes issued a Report and Recommendation [Doc. No. 13] recommending that Andrews' complaint be denied and dismissed with prejudice for failure to state a claim. Magistrate Judge Hayes provides two grounds for dismissal of Andrews' complaint.

First, under Edwards v. Balisok, 520 U.S. 641, (1997), and Heck v. Humphrey, 512 U.S. 477 (1994), she found that Andrews cannot proceed with a Section 1983 claim of excessive force when his claims "are so entangled with . . . subsequent disciplinary proceedings that success on the former would implicate the validity of the latter." [Doc. No. 13, p. 9-10]. Because "his disciplinary case has not been 'reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus,'" [Doc. No. 13, p. 10], his Section 1983 claim

is not cognizable at this time. The Court agrees with and ADOPTS Magistrate Judge Hayes' recommendation on this basis.

Second, however, Magistrate Judge Hayes recommends, in the alternative, that Andrews has failed to show that the force officers used against him was "not applied in a good-faith effort to maintain or restore discipline, but was applied maliciously and sadistically to cause harm, and that the injury he suffered was more than *de minimis*, but not necessarily significant." [Doc. No. 13, pp. 10-11]. The Court finds that it need not reach this alternative ruling and DECLINES TO ADOPT Magistrate Judge Hayes' recommendation on this ground.

MONROE, LOUISIANA, this 18th day of April, 2007.

A handwritten signature in black ink, appearing to read "Robert G. James", is written over a horizontal line.

ROBERT G. JAMES
UNITED STATES DISTRICT JUDGE